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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,292	08/24/2000	Linda M Smith	254070-2	3365

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EXAMINER

YOUNG, JOHN L

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/645,292

Applicant(s)

SMITH ET AL.

Examiner

John L Young

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-26 is/are allowed.
- 6) ☒ Claim(s) 1-20, 27-29, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER

NON FINAL REJECTION ON RCE

(Paper#13)

REQUEST FOR CONTINUED EXAMINATION (RCE)

1. The request filed on 02/02/2004 for continued examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/645,292 is acceptable and an (RCE) has been established. An action on the (RCE) follows:

STATUS

2. Claim 30 canceled by Applicant.
3. Claims 1-29 and 31-32 are pending.

ALLOWABLE SUBJECT MATTER

4. Claims 21-26 contain allowable subject matter.

REASONS FOR ALLOWABILITY

5. Independent claim 21 recites in part: "assigning metrics to data elements in the user profile, each metric representing either an incremental or detrimental change in a market segmentation variable, and including a confidence factor that decays over time; calculating a user

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index by applying the assigned metrics to the market segmentation variables. . . .”; even though

Shaw (FIG. 11) shows receiving statistics from users, the prior art references of record do not teach or suggest such confidence factor decay probability and/or statistical limitations in combination with an online marketing/shopping system including utilization of customer profile information including online customer photographs. Therefore, claim 21 is neither anticipated nor rendered obvious by the prior art of record.

Dependent claims 22-26 are allowable because said claims depend from independent claim 21 or subsequent base claims depending from claim 21.

DRAWINGS

6. This application has been filed with drawings that are acceptable for examination and publication purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

CLAIM REJECTIONS — 35 U.S.C. §103(a)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-20, 27-29 & 31-32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Shaw 6,199,106 (03/06/2001) [US f/d: 9/14/1998] (herein referred to as “Shaw”) in view of

Ogaswara 6,513,015 (01/28/2003) [US f/d: 9/25/1998] (herein referred to as "Ogaswara").

As per claim 1, Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document) shows elements that suggest: "A computer-implemented method for targeting marketing content to an online user, each content having an associated target profile, comprising the steps of: collecting data describing the user . . . to the target profile associated with each content; and presenting the online user with content based on the comparison."

Shaw lacks an explicit recitation of "including a photographic likeness of the user, in a user profile; comparing the user profile, including information derived from the user's photographic likeness. . . ." even though Shaw (col. 1, ll. 21-27; col. 2, ll. 38-55; and col. 18, ll. 50-60) suggests same.

Ogaswara (col. 11, ll. 13-17) discloses: "*the camera . . . might comprise a digital still camera . . . or any other type of device that outputs a digital image. . . .*"

Ogaswara (col. 4, ll. 1-67) discloses: "*the establishment's staff is able to identify each customer by their photograph. . . .*"

Ogaswara (col. 14, ll. 21-46) discloses: "*Each customer's data record . . . includes a photo log consisting of a number of historical visual images of the customer. . . the establishment's staff . . . is able to access that customer's photo log and up-load an acceptable latest visual image. . .*"

Ogaswara (col. 5, ll. 16-40) discloses: "*The customer ID card is . . . used in*

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connection with a customer assistance or kiosk terminal which is able to develop and display various personalized assistance recommendations based on an analysis of demographic information, transaction history, and customer profile data read from the customer's AID card, or combination of an ID card and customer data maintained in a database in a store server or host computer. . . ." The Examiner interprets these disclosures as showing online shopping embodiments.

Ogaswara (The ABSTRACT; FIG. 5; FIG. 4; FIG. 3; FIG. 6; FIG. 7; FIG. 2; FIG. 1; col. 1, ll. 7-50; col. 2, ll. 1-67; col. 3, ll. 1-20; col. 4, ll. 1-67; col. 5, ll. 16-40; col. 6, ll. 5-67; col. 9, ll. 1-67; col. 10, ll. 1-15; col. 11, ll. 4-40; col. 13, ll. 55-67; col. 14, ll. 1-67; col. Col. 16, ll. 28-67; col. 17, ll. 21-62; and whole document) shows an online implementation of "a photographic likeness of the user, in a user profile; comparing the user profile, including information derived from the user's photographic likeness. . . ."

Ogaswara proposes online customer photograph modifications that would have applied to the system of Shaw. Claim 1 would have been rendered obvious at the time of the invention by a person of ordinary skill in the art because claim 1 suffers from undue breadth, and it would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Shaw (col. 1, ll. 21-27; col. 2, ll. 38-55; and col. 18, ll. 50-60) with the teachings of Ogaswara because such combination would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)) and such combination would have also provided *"customer recognition information in real-time and make that information available to a retail store's sales*

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force, such that a store clerk is able to identify customers by sight and obtain customer profile and shopping preferences information such that they are able to provide appropriate shopping assistance. . . .” (See Ogaswara (col. 3, ll. 35-47)).

As per dependent claims 2-14, Shaw in view of Ogaswara shows the method of claim 1 and subsequent base claims depending from claim 1.

Shaw lacks explicit recitation of the elements and limitations of claims 2-14, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 2-14 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 2-14, because such selection would have provided means which *“Allows users to view advertisements while receiving, composing, and managing personal electronic communications.”* (see Shaw (col. 2, ll. 5-10)) and such combination would have also provided *“customer recognition information in real-time and make that information available to a retail store’s sales force, such that a store clerk is able to identify customers by sight and obtain customer profile and shopping preferences information such that they are able to provide appropriate shopping assistance. . . .”* (See Ogaswara (col. 3, ll. 35-47)).

Independent claim 15 is rejected for substantially the same reasons as independent claim 1.

As per dependent claims 16-20, Shaw in view of Ogaswara shows the system of claim 15 and subsequent base claims depending from claim 15.

Shaw lacks explicit recitation of the elements and limitations of claims 16-20, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; and col. 18, ll. 50-60; and whole document suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 16-20 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 16-20, because such selection would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)) and such combination would have also provided *"customer recognition information in real-time and make that information available to a retail store's sales force, such that a store clerk is able to identify customers by sight and obtain customer profile and shopping preferences information such that they are able to provide appropriate shopping assistance. . . ."* (See Ogaswara (col. 3, ll. 35-47)).

As per claim 27, Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) discloses: *"Electronic mail (or 'e-mail') is becoming a popular way or people to communicate. Using e-mail, a person can send messages and other information (such as pictures, sound recordings . . . etc. that are in digital form) electronically to other e-mail users."* The Examiner interprets the above disclosure as showing "an associated user profile including a photographic likeness of the user . . . the associated user's photographic likeness. . . ."

Shaw lacks an explicit recitation of "an associated user profile including a photographic likeness of the user . . . the associated user's photographic likeness. . . ." even though Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) shows the same.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Shaw (col. 1, ll. 22-26; FIG. 9; FIG. 3; col. 11, ll. 1-20; FIG. 6; and FIG. 11) would have been selected in accordance with "an associated user profile including a photographic likeness of the user . . . the associated user's photographic likeness. . . ." because such selection would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)).

Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col.

18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) shows elements that suggest: "A method for targeting marketing content to an online user having an associated target profile including at least one market segmentation variable and each online user having an associated user profile including a plurality of data elements, comprising the steps of: collecting data describing the user in the user profile, the data including responses to context-sensitive questions; comparing the user profile, including information derived from the context-sensitive questions, to the target profile associated with each content; and presenting the user with content based on the comparison."

Shaw (FIG. 3; and col. 12, ll. 21-56) discloses: "*Illustrated is question fifteen 701 of the member profile. The user responds to the illustrated question . . . by clicking on the appropriate circle next to each option. . . .*" The Examiner interprets this disclosure as showing "including responses to context-sensitive questions; comparing the user profile, including information derived from the context-sensitive questions, to the target profile associated with each content; and presenting the user with content based on the comparison."

Shaw lacks an explicit recitation of "context-sensitive questions. . . ." even though Shaw (FIG. 3; col. 12, ll. 21-56; FIG. 7; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67) suggests same.

Ogaswara (col. 11, ll. 13-17) discloses: "*the camera . . . might comprise a digital still camera . . . or any other type of device that outputs a digital image. . . .*"

Ogaswara (col. 4, ll. 1-67) discloses: "*the establishment's staff is able to identify*

each customer by their photograph. . . .

Ogaswara (col. 14, ll. 21-46) discloses: *"Each customer's data record . . . includes a photo log consisting of a number of historical visual images of the customer. . . the establishment's staff . . . is able to access that customer's photo log and up-load an acceptable latest visual image."*

Ogaswara (col. 5, ll. 16-40) discloses: *"The customer ID card is . . . used in connection with a customer assistance or kiosk terminal which is able to develop and display various personalized assistance recommendations based on an analysis of demographic information, transaction history, and customer profile data read from the customer's AID card, or combination of an ID card and customer data maintained in a database in a store server or host computer. . . ."* The Examiner interprets these disclosures as showing online shopping embodiments.

Ogaswara (The ABSTRACT; FIG. 5; FIG. 4; FIG. 3; FIG. 6; FIG. 7; FIG. 2; FIG. 1; col. 1, ll. 7-50; col. 2, ll. 1-67; col. 3, ll. 1-20; col. 4, ll. 1-67; col. 5, ll. 16-40; col. 6, ll. 5-67; col. 9, ll. 1-67; col. 10, ll. 1-15; col. 11, ll. 4-40; col. 13, ll. 55-67; col. 14, ll. 1-67; col. Col. 16, ll. 28-67; col. 17, ll. 21-62; and whole document) shows an online implementation of "an associated user profile including a photographic likeness of the user . . . the associated user's photographic likeness. . . ."

Ogaswara proposes online customer photograph modifications that would have applied to the system of Shaw. Claim 27 would have been rendered obvious at the time of the invention by a person of ordinary skill in the art because claim 27 suffers from undue breadth, and it would have been obvious at the time the invention was made to a

person having ordinary skill in the art to combine the disclosure of Shaw (col. 1, ll. 21-27; col. 2, ll. 38-55; and col. 18, ll. 50-60) with the teachings of Ogaswara because such combination would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)) and such combination would have also provided *"customer recognition information in real-time and make that information available to a retail store's sales force, such that a store clerk is able to identify customers by sight and obtain customer profile and shopping preferences information such that they are able to provide appropriate shopping assistance. . . ."* (See Ogaswara (col. 3, ll. 35-47)).

As per dependent claims 28-29 & 31-32, Shaw in view of Ogaswara shows the method of claim 27 and subsequent base claims depending from claim 27.

Shaw lacks explicit recitation of the elements and limitations of claims 28-29 & 31-32, even though Shaw (the ABSTRACT; FIG. 1; FIG. 3; FIG. 4; FIG. 6; FIG. 7; FIG. 9; FIG. 11; col. 1, ll. 21-27; col. 2, ll. 38-55; col. 3, ll. 5-67; col. 4, ll. 1-67; col. 5, ll. 1-67; col. 6, ll. 1-67; col. 7, ll. 1-67; col. 8, ll. 1-11; col. 9, ll. 60-67; col. 10, ll. 1-67; col. 11, ll. 1-67; col. 18, ll. 50-60; col. 21, ll. 5-67; and col. 22, ll. 1-67; and whole document) suggests same.

Official Notice is taken that both the concepts and the advantages of the elements and limitations of claims 28-29 & 31-32 were well known and expected in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the elements and limitations of claims 28-29 & 31-32,

because such selection would have provided means which *"Allows users to view advertisements while receiving, composing, and managing personal electronic communications."* (see Shaw (col. 2, ll. 5-10)) and such combination would have also provided *"customer recognition information in real-time and make that information available to a retail store's sales force, such that a store clerk is able to identify customers by sight and obtain customer profile and shopping preferences information such that they are able to provide appropriate shopping assistance. . . ."* (See Ogaswara (col. 3, ll. 35-47)).

RESPONSE TO ARGUMENTS

8. Applicant's arguments (Pre-Amendment B, paper#11 on RCE, filed 02/02/2004) have been fully considered but they are not persuasive for the following reasons:

(NOTE: As per claims 2-14, 16-20, 28-29, and 31-32, Applicant's response fails to seasonably challenge the Official Notice evidence of the prior Office Action.

It was well settled that "If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, Applicant is charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made." (See MPEP 2144.03).

In this case, Applicant's response (Amendment A, paper#6, filed 07/16/2003) is

silent as to a rebuttal of the Official Notice evidence presented in the prior Office

Action (e.g., there is no demand for references in support of the Official Notice evidence); therefore, said Official Notice evidence is deemed admitted, and no further references are required in support of said Official Notice evidence.

In response to Applicant's arguments (Pre-Amendment B, paper#11, p. 18) which asserts that "'The fact that Shaw does not suggest the use of such images certainly means that this reference is also silent on altering the images by the remote system to incorporate a portion of the content into the photographic image for display to the user as recited in claims 4, 5, 6, 7, 10, 11, 12, 17, 19, 24, 25, 31 and 32.' Certainly it is implicit in the foregoing paragraph that Applicants are demanding a citation of a reference or combination of references. . . ." although Applicant contends that a demand for a reference is implicit, no explicit demand was made and no such demand was inferred by the Examiner. Furthermore, the rules do not require an implicit demand; the MPEP requires a "demand for evidence. . . ."

In response to Applicant's arguments (Pre-Amendment B, paper#11, pp. 10-11, 16-17 & 19) which asserts that "Shaw emphasizes the advantages of using an E-mail system to target advertising to off-line users over using an online system. . . ." it is well settled in the law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. (See *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (CAFC 1989)). In this case, Shaw (FIG. 6;

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and col. 23, ll. 32-57) reasonably suggests embodiments of E-mail messages and

advertisements being transmitted online over the Internet. And Shaw (col. 1, ll. 20-67 and col. 2, ll. 1-67) reasonably suggests embodiments of E-mail messages and advertisements being transmitted online over the Internet.

Furthermore, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the Shaw reference in conjunction with the knowledge of one of ordinary skill in the art either teaches and/or suggests all of the elements and limitations of the instant invention. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)." (See MPEP 2134.01). Furthermore, it is well settled in the law that "Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments." (See *In re Susi*, 169 USPQ 423 (CCPA 1971).

CONCLUSION

9. Any response to this action should be mailed to:

Commissioner for Patents
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Alexandria, VA 22313-1450

Any response to this action may be sent via facsimile to either:

(703) 746-7239 or (703) 872-9314 (for formal communications EXPEDITED
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(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

Hand delivered responses may be brought to:

Seventh floor Receptionist
Crystal Park V
2451 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to John L. Young who may be reached via telephone at
(703) 305-3801. The examiner can normally be reached Monday through Friday
between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or

Serial Number: 09/645,292

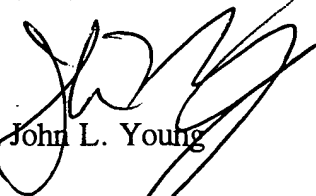
(Smith et al.)

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proceeding should be directed to the Group receptionist whose telephone number is

(703) 305-3900.

A handwritten signature in black ink, appearing to read "JL Young", is written over the printed name "John L. Young".

John L. Young

Primary Patent Examiner

**JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER**

April 8, 2004